

**THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOHN M. GERA,

Plaintiff,

v.

BOROUGH OF FRACKVILLE, et al.,

Defendants.

:
: **CIVIL ACTION NO. 3:20-CV-469**
:
: **(JUDGE MARIANI)**
: **(Magistrate Judge Mehalchick)**
:
:
:
:

ORDER

AND NOW, THIS 31st DAY OF MARCH 2023, upon de novo review of Chief

Magistrate Judge Karoline Mehalchick's Report and Recommendation ("R&R") (Doc. 45),

Plaintiff's objections thereto (Doc. 46) and all relevant documents, **IT IS HEREBY**

ORDERED THAT:

1. Plaintiff's Objections are **OVERRULED**.¹

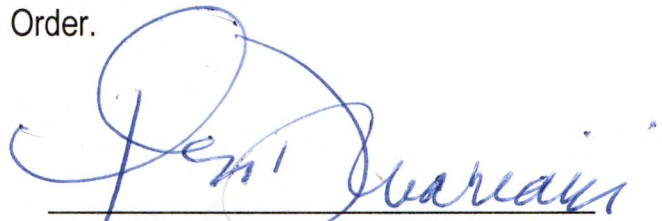
¹ The Court clarifies two matters raised in Plaintiff's objections. First, regarding Plaintiff's Third Motion for Entry of Default with Affidavit (Doc. 32) the R&R notes that it is "difficult . . . to construe the specific arguments Gera makes in his motion for entry of default." (Doc. 45 at 3-4.) The Court agrees with this assessment. In analyzing Plaintiff's motion, the R&R looks at the timing of the filing of the Amended Complaint filed on May 3, 2022, (Doc. 34) and the motion for entry of default filed on April 21, 2022, which is titled "Third Motion for Entry of Default" (Doc. 32) but referred to in the R&R as Gera's "second motion for entry of default" (Doc. 45 at 4). To the extent that Gera's supporting Affidavit relates to Defendant's failure to answer his March 20, 2020, Complaint (Doc. 1) and asserts that default judgment is warranted on this basis (see Doc. 33 at 1-3), his Third Motion for Entry of Default with Affidavit (Doc. 32) is properly denied on the basis that, at the time Plaintiff filed his Third Motion for Entry of Default with Affidavit (Doc. 32), Plaintiff's March 20, 2020, Complaint had been dismissed (see Doc. 31 ¶ 4).

Second, Plaintiff corrects the Magistrate Judge's statement that an appeal is pending in his state court proceedings, asserting that his Right to Know Law case is no longer pending because his appeal was denied by the Supreme Court of Pennsylvania on May 11, 2022. (See Doc. 46 at 16.) Issues related to the

2. The R&R is **ADOPTED** for the reasons set forth therein as clarified by this Order.

See supra p. 1 n.1.

3. Defendants' Motion to Dismiss Plaintiff's Amended Complaint (Doc. 35) is **GRANTED** to the extent that Plaintiff's Amended Complaint for Violation of Civil Rights (Doc. 34) is dismissed without prejudice.
4. Plaintiff's Amended Complaint for Violation of Civil Rights (Doc. 34) is **DISMISSED WITHOUT PREJUDICE**.
5. Plaintiff shall file an amended complaint within thirty (30) days of the date of this Order. Failure to do so may result in dismissal of this action.
6. Plaintiff's Third Motion for Entry of Default with Affidavit (Doc. 32) is **DENIED**.
7. Plaintiff's Motion for Summary Judgment (Doc. 39) is **DENIED WITHOUT PREJUDICE** as premature; and
8. The above-captioned action is remanded to Chief Magistrate Judge Mehalchick for further proceedings consistent with this Order.



Robert D. Mariani
United States District Judge

pendency of state court proceedings did not play a role in the Magistrate Judge's recommendation that Defendants' motion to dismiss be granted (see Doc. 45 at 5 n.2). Therefore, the resolution of those proceedings does not alter the recommended disposition.